

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

ILLINOIS
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COMMERCE COMMISSION

ORIGINAL

2008 MAR 10 A 4:44

IN RE: ENBRIDGE PIPELINE
ILLINOIS LLC.

) CHIEF CLERK'S OFFICE

) 07-0446

Petition pursuant to Section 8-406,s-503,
8-509,13-403,13-404,13-405,15-101,15-401,
16-108,16-115,19-110,21-401, of the Public
Utilities Act for a certificate by pipeline, and
for entry of an order authorizing and.
directing construction and operation of
a petroleum pipeline and granting authority
to exercise eminent domain.

**OBJECTION BY NON-PARTY EXXONMOBIL PIPELINE COMPANY
TO VERIFIED APPLICATION FOR ISSUANCE OF A SUBPOENA DUCES TECUM**

ExxonMobil Pipeline Company (“ExxonMobil Pipeline”), which is not a party to this proceeding, objects to the application by Intervenors Pleasant Murphy and the Village of Downs for a *subpoena duces tecum*. The Application for Subpoena was filed on February 27, 2008, but was not served on ExxonMobil Pipeline until March 3.

By way of overview, the Application for Subpoena should be denied in its entirety because:

- The recipient of the proposed subpoena, ExxonMobil Pipeline, is not a party to the current proceeding, has no interest in the pipeline at issue in this proceeding, and has no relationship with Intervenors.
- Intervenors confuse ExxonMobil Pipeline’s interest in an unrelated proposed project with its non-interest in the project at issue in this proceeding.
- Contrary to the Illinois Administrative Code (“Code”), Intervenors make no specific request for information but make a sweeping, untargeted approach that would render compliance with the requested subpoena virtually impossible.

- Contrary to the Code, Intervenors have not made the required “showing” that the information sought (whatever that may be) cannot be obtained from parties actually before the Commission.
- Contrary to the Code, Intervenors have not demonstrated the relevant facts to be “proved” by the information sought.
- Intervenors have distorted various unrelated internet material in an effort to bootstrap a basis for their request. That effort is without merit, and the attachments to the Application for Subpoena overwhelmingly relate to projects other than the project before this Commission.

In further support of its objection, ExxonMobil Pipeline states as follows:

1. Intervenors attempt to distract the Commission from the fact that ExxonMobil Pipeline is not a party to this proceeding, has *no* connection whatsoever to the pipeline application that is currently before this Commission, and has no relationship to Intervenors. None of the documents Intervenors seek are “reasonably required” for this proceeding as required by 83 Ill. Admin. Code 200.380.
2. Even if the documents Intervenors seek were somehow relevant to this proceeding, Intervenors are required to show that the materials “cannot reasonably be obtained” from a current party to this proceeding or from public sources as required by 83 Ill. Admin. Code 200.380. The Application for Subpoena is insufficient on its face because it makes no such showing. Instead, it simply speculates that the documents sought “*may* only be in the possession of the ExxonMobil Pipeline Company.” (App. at ¶ 14, emphasis added) Intervenors have made no showing that they cannot obtain the materials relevant to this proceeding from Enbridge.
3. Indeed, it would appear that there is no compelling need for Intervenors to seek the requested documents from Enbridge, because Intervenors have found sufficient documents through Enbridge and other public sources to put their testimony before this Commission.
4. The documents Intervenors request, in addition to being irrelevant and obtainable from other sources, are also vaguely defined and sweepingly overbroad. Through a few Google searches for “pipeline” and some surfing of Exxon Mobil Corporation’s website, Intervenors appear to have cobbled together a number of **unrelated** exhibits in an effort to somehow suggest

that the Enbridge application at issue does not serve the public good. The Application for Subpoena appears to be a free-wheeling attempt to get to sensitive, high-level ExxonMobil (including ExxonMobil Pipeline's parent and other affiliates who have not been served) information -- not for any purpose germane to these proceedings.

5. Despite purportedly seeking to evaluate the "public need" for the pipeline currently under consideration, only one of Intervenors' twelve requested categories of documents actually seeks documents addressing the public need for a pipeline – the Texas Access Pipeline – and that is *not* even the pipeline at issue here. (App. at 2). None of the documents sought in the Application for Subpoena are related to the public need for the pipeline at issue in *this* proceeding.

6. Intervenors' own exhibits show that the Texas Access Pipeline for which they seek documents is a *proposed* project that has not even been agreed to by Enbridge and ExxonMobil Pipeline. (App. at Ex. D). To allow the requested subpoena to issue in this proceeding would mean that essentially any document of any entity related to, or involved in, the delivery of petroleum products could be fair game. For example, Intervenors actually cite Enbridge's "Gateway Pipeline" -- which is to run from the Alberta oil sands to *Canada's west coast* for the *Asian market* -- as evidence of a close relationship between Enbridge Inc. and ExxonMobil Pipeline *solely because Exxon Mobil Corporation has an undefined "clear and present presence" in Asia*. (App. ¶ 12). It is difficult to imagine a more tenuous basis on which to seek documents in *this* proceeding.

7. Intervenors cite *Lakehead Pipeline Company v. Illinois Commerce Commission*, 296 Ill. App. 3d 942, 696 N.E.2d 345 (Ill. App. Ct. 1989) for the proposition that a pipeline requires more than a benefit to a limited number of private interests. While that much may be true, *Lakehead* does not stand for the idea that "an alleged benefit to a component of the industrial public...must be reviewed in order to see just how widely dispersed any other benefit to any other portion of the public may be, if at all." (App. ¶ 9). In essence, Intervenors apparently believe that no matter how great the public need, eminent domain should be denied if any one

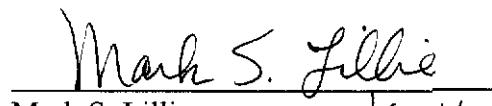
business entity stands to benefit. In *Lakehead*, a new pipeline was denied because it would simply displace oil currently carried, instead of supplying additional capacity. Regarding public need, the court said: "Public need, according to the Commission, must be determined not by looking to the needs of any individual or number of individuals, but by looking to the *public at large* since '[t]he public *** is greater than a limited number of market players.'" *Lakehead* at 948 (emphasis added). The need of the public can be evaluated on its own, and the interests of Enbridge or ExxonMobil Pipeline, or any other private entity, do not come into play.

* * *

Intervenors' request for a non-party subpoena fails to comply -- both procedurally and substantively -- with the Illinois Administrative Code. For the foregoing reasons, the application for the issuance of a *subpoena duces tecum* should be denied.

Respectfully submitted,

DATED: March 10, 2008



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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.

Application pursuant to sections 8-503, 8-509 and
15-401 of the Public Utilities Act — the Common
Carrier by Pipeline Law to Construct and Operate a
Petroleum Pipeline and when necessary, to Take
Private Property as Provided by the Law of
Eminent Domain.

Docket No. 07-0446

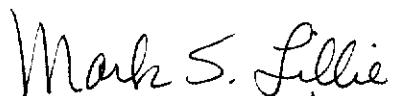
NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date we have filed with the Clerk of the Illinois Commerce Commission, ExxonMobil Pipeline Company's Objection to Verified Application for Issuance of a Subpoena Duces Tecum on behalf of Enbridge Pipelines (Illinois) L.L.C. ("Enbridge") in the above-captioned matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark S. Lillie, an attorney, certify that I cause copies of the OBJECTION BY NON-PARTY EXXONMOBIL PIPELINE COMPANY TO VERIFIED APPLICATION FOR ISSUANCE OF A SUBPOENA DUCES TECUM, to be served on each of the parties listed on the service list via electronic or regular mail, this 10th day of March, 2008.

/s/ Mark S. Lillie

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1960 N. 2200 East Rd.
LeRoy, IL 61752

Walter Ehrat
800 Meyers Lane
Vandalia, IL 62471

Herman Farms, Inc.
15515 Dan Patch Dr.
Plainfield, IL 60544

Leslie Foffel
6116 Green Valley Rd.
Clinton, IL 61727

Thomas and Ann Fulop
25738 N. 2150 E. Rd.
Lexington, IL 61753

Darrell and Julie Gilmore
R.R. 1, Box 432
Herrick, IL 62431

Daniel Greer
Manager, Kraft Farms, LLC
4265 Fifth St.
Springfield, IL 62701

Robert L. Grissom
Robert L. Grissom Partnership
9804 Nicholas St.
Omaha, NE 68114

Service List – 07-0446

John Hunt
R.R. 1, Box 286
Clinton, IL 61727

Suzanne W. Klassen
19570 E. 500 N. Rd.
Downs, IL 61736

David E. Klein
1018 Oak Hill St.
Normal, IL 61761

Steven L. and Debra S. Kuerth
31594 N. 2180 East Rd.
Gridley, IL 61744

Glenn R. and Naomi K. Kunkel
13874 Lisbon Rd.
Newark, IL 60541

John and Patricia Mathewson
PO Box 43
Oconee, IL 62553

Joseph A. McCormick
3595 Rider Trail South
Earth City, MO 63045

Marco J. Muscarello
38W386 Burr Oak Lane
St. Charles, IL 60175

Patricia A. Muscarello
9225 N. Crimson Canyon
Fountain Hills, AZ 85268

Michael Pryor
Rte. 2, Box 170
Ramsey, IL 62080

Alice M. Raber
Trustee of Raber Living Trust
Flanagan, IL 61740

C. Kenneth Sefton
R.R. 1, Box 143
Brownstown, IL 62418

Donald Shea
6116 Green Valley Rd.
Clinton, IL 61727

Carson Township
R.R. 1, Box 412
Herrick, IL 62431

Leslie D. and Mary Troyer
17792 E. 2200 North Rd.
Hudson, IL 61748

Mary Westerhold
5885 N. St. Rt. 159
Edwardsville, IL 62025

Melvin Dellinger
PO Box 635
Clinton, IL 61727

Mary Dugan
940 East Old Willow Road
Prospect Heights, IL 60070

Thomas B. Cray
8940 Mansfield Ave.
Morton Grove, IL 60053

H. Rene'e Cray Zorc
936 S. 4th Avenue
Libertyville, IL 60048

Phillip Cray
1102 Deer Trail Court
Port Byron, IL 61275

David Cray
122 Goulburn Avenue
Ottawa, Ontario K1N8E2
Canada

Service List – 07-0446

Lois Eileen Cray
R.R. 2 Box 321
Clinton, IL 61727

Frances Cray Barnard
1765 Aynsley Way
Vero Beach, IL 32966

Jerry R. Owings
P.O. Box 184
The Sea Ranch, CA 95497

Fred Owings
P.O. Box 421
The Sea Ranch, CA 95497

Kevin Cray
P.O. Box 394
Clinton, IL 61727

Terrence Brian Cray
1540 N. LaSalle Dr. #1008
Chicago, IL 60610

Robert Carroll
17583 N. 1090 East Rd.
Pontiac, IL 61764

Carl and Mary Doolen, Trustee
2325 Bark Ridge Ct.
Lisle, IL 60532

M&D Jones Farm, Inc.,
Care of Maurice E. Jones
18264 N. 2150 E. Road
Towanda, IL 61776

William H. Harris, Trustee of the
Maureen J. Harris Revocable Trust
PO Box 412
Fairfield, VA 24435

Dewey Dyer
15 Jodi Lane
Bloomington, IL 61701

Money Creek Township
c/o Terry Giannoni, Township Supervisor
24133 N 2250 East Road
Lexington, IL 61753

Money Creek Township Road District
Gary Moncelle Township Road Dist. Cmsnr.
c/o Terry Giannoni, Township Supervisor
24133 N 2250 East Road

Towanda Township
c/o Mark Kraft, Township Supervisor
PO Box 61
Towanda, IL 61776

Towanda Township Road District
Max Foster, Township Road Dist. Cmsnr.
c/o Mark Kraft, Township Supervisor
PO Box 61
Towanda, IL 61776